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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 8th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO. 43116 OF 1993

BETWEEN :

Shri. G.B. Venkata Reddy,  
Son of Byra Reddy,  
Aged about 55 years,  
Residing at Gownicheruvupalli,  
Chintamani Taluk,  
Kolar District

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... PETITIONER

(Ms. Geethadevi for  
(Sri M. Papanna, Advocate)

A N D :

1. Smt. Ramamma,  
Wife of Subba Reddy,  
Aged about 50 years
  2. Shri P.L. Chandrashekara Reddy,  
Son of Lakshmana Reddy,  
Aged about 32 years.
- Respondents 1 and 2 are residing  
at Gownicheruvupalli, Chintamani  
Taluk, Kolar District
3. The Deputy Commissioner,  
Kolar District  
Kolar
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4. Karnataka Appellate Tribunal,  
Multi-Storeyed Buildings,  
Bangalore - 1  
Represented by its Chairman

.. RESPONDENTS

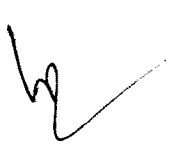
(Sri C. Ramakrishna H.C.G.P. for R - 3 & 4  
Sri G. Papireddy for R - 1 &  
Sri P.L. Chandrasekhara Reddy for R-1  
R - 2 served)

Writ Petition filed under Articles 226 & 227 of the Constitution of India, praying to; Issue a writ of certiorari or any other appropriate writ or command or direction against the respondents and quash the order dated the 30th November 1993 in Revision No. 5 of 1990 on the file of the Karnataka Appellate Tribunal at Bangalore, as per Annexure - D, etc.

This Writ Petition coming on for Hearing, this day, the Court made the following :

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Sy.No. 89/3 had an extent of 36 guntas which is involved in a long drawn litigations between close relations. The petitioner and the 1st respondent are closely related by marriage. The property was owned by one



one Rama Reddy. He sold 13 guntas of land to the petitioner on 18-12-1974. Likewise, the 2nd respondent purchase the balance of 23 guntas on the very same day, i.e., on 18-12-1974. Subsequently, the 2nd respondent sold the 23 guntas of land to the 1st respondent. It is alleged that the petitioner notified the 2nd respondent to sell the property to him. As this was not done, proceedings were initiated under the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 (hereinafter referred to as "the Fragmentation Act"). The Deputy Commissioner, Kolar, upheld the claim of the 1st respondent and held that the petitioner has not made out his right to purchase the land, under Section 5 of the Fragmentation Act. Aggrieved by the said order, an appeal was preferred. The Appellate Authority, by the impugned order, has dismissed the appeal. The said orders are challenged before me in these proceedings.

2. I have heard Ms. Geethadevi, as also Mr. Chandra sekhar Reddy, the learned counsel appearing for the

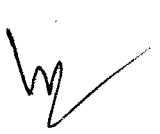
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the respective sides.


3. The property in question became fragments on transfer on 18-12-1974. The alienations were valid - dated by the enactment of the Karnataka Act No. 19/83 wherein Section 4 read thus :

"Notwithstanding anything contained in any law or in any judgment, decree or order of any court or other authority, any transaction, including transfer, partition or sub-division of any land, entered into or effected and any action or thing taken or done in relation to land before the commencement of this Act and in contravention of the provisions of the principal Act, shall, notwithstanding anything contained in the principal Act, be not deemed to be void merely on the ground of such contravention."

4. This Act came into force on 15th September, 1983. The alienation in favour of the 1st respondent was made on 14-12-1987. Obviously this is after coming into force of the Act. The alienations effected by Rama Reddy to the petitioner as also the 1st respondent,



respondent, are validated by Section 4 of the Karnataka Act No. 19 of 1983, referred to above. The question then would be, as to whether there has been a compliance with the requirements of Section 4 of the Fragmentation Act which calls upon the authorities to enter all fragments in a village, in the Record of Rights or where there is no Record of Rights in such village record as the State Government may prescribe. Sub-sec. (2) thereof also contemplates that notice of every such entry made under sub-sec. (1) shall be given in the manner prescribed for the giving of notice under Chapter-XI of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964) of an entry in Register of Mutations. The short point then would be, as to whether an entry as such has been made of fragments effected by virtue of the transfers in favour of the petitioner on the one hand, and the 1st respondent on the other, and whether such notice has been given to the 1st respondent as the case may be.



5. It may be noticed that the right under Section 5(2) enures to a person to whom a notice has been given with respect to the land, under sub-sec. (2) of Section 4 and unless a right has been accrued under Section 4(1) and (2), the right cannot be claimed by a person under Sec. 5(1)(a), because that Section states that no person shall sell any fragment in respect of which a notice has been given under sub-section (2) of Section 4. That is to say, the fragmentation with respect to which a notice has been given under Section 4(2) cannot be sold except in accordance with the provisions of Section 5(1)(b) to wit, the right under Section 5(1)(b) enures only to the land with respect to which notice has been given. Therefore, essentially the question would be as to whether there has been notice to the persons before the land became fragments under Section 3 of the Fragmentation Act. Merely because the transactions effected prior to coming into force of the Kamataka Act No. 19 of 1983 are valid, it does not mean that all fragments effected



effected are also valid. The claim of invalidation would be available to a person, but the right under Section 5 can be claimed only if the statutory requirement has been complied with. This is the view expressed by this Court in ILR 1991 KAR 4408. Therefore, the question arises as to whether the finding of fact entered by the authorities that there is compliance of the requirement of Section 4 of the Fragmentation Act is correct. Ms. Geethadevi, learned counsel appearing for the petitioner, submits that the Divisional Commissioner has entered a finding to the effect that an entry has been made in the village records that the lands in question are fragments and there was notice given to the 2nd respondent as well in this behalf, and, therefore, whatever right the petitioner is entitled under Section 5 has accrued. This right cannot be taken away by means of any amending Act. In this behalf there is no finding entered by the Appellate Authority after going through the records. The Appellate Authority



Authority, being a Court of appeal has to peruse the records and enter a finding of fact, has failed to do so. Then the only course open is to set aside the order of the Appellate Authority and remit the matter for fresh disposal. A contention has been urged that in view of the ~~repealing~~ of the Amendment Act of 1990, the appeal filed cannot be continued with. But I am afraid, that this contention is misplaced, because Section 2(d) of the Repealing Act states as hereunder :

"2. REPEAL OF KARNATAKA ACT 1 OF 1967  
AND SAVINGS;

- (1) The Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 (Karnataka Act 1 of 1967) is hereby repealed :

Provided that the repeal shall have no effect,-


- (a) .....  
(b) .....  
(c) .....  
(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, c





or punishment as aforesaid; and such investigation, legal proceeding or remedy may be instituted, continued or enforced; "

6. This means, by virtue of the impugned order made by the Appellate Authority, a right has been vested with the petitioner or the respondent, as the case may be, that is a right the respective parties acquired under the Fragmentation Act and that the validity thereof can be examined and decided in a valid proceeding that is pending on the date of the commencement of the Act. The principles of Section 6 of the General Clauses Act will apply and all the proceedings can be continued by virtue of the provisions referred to above. The appeal filed by the petitioner before the Appellate Authority is competent and shall be disposed of as if the Act was in force. The Appellate Authority shall enter a finding as to whether Section 4 of the Fragmentation Act has been complied with or not and whether the petitioner herein has accrued a right as contemplated under Section 5 of the Act by virtue of issuance of

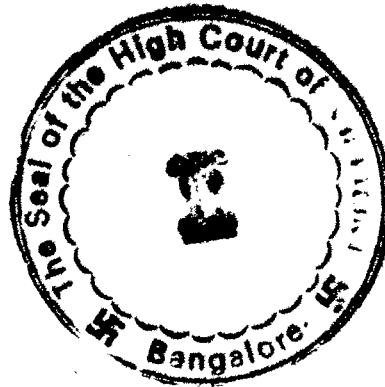


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of notice. The parties shall appear before the Appellate Authority on 13-7-1998. The appeal shall be disposed of within 3 months thereof. The writ petition is disposed of as above.

Sd/-  
JUDGE



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